

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENDA M. GOODE and U.S. POSTAL SERVICE,
POST OFFICE, Sanburn, NY

*Docket No. 02-295; Submitted on the Record;
Issued July 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that her left shoulder condition was causally related to her employment; and (2) the Office of Workers' Compensation Programs properly denied appellant's request for merit review.

On February 26, 2000 appellant, then a 47-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that on February 10, 2000 she first realized that her left shoulder bursitis and tendinitis were due to her employment.

In a report dated February 20, 2000, Dr. Frank J. Schlehr, an attending Board-certified orthopedic surgeon, diagnosed a possible rotator cuff tear which he attributed to her employment. Dr. Schlehr noted that appellant had tripped over her dog on February 11, 2000 which caused her to land on her left shoulder.

In a report dated March 10, 2000, Dr. Schlehr noted an "MRI [magnetic resonance imaging] report on February 19, 2000 revealed a large amount of fluid within the subacromial/subdeltoid bursa, consistent with bursitis. There is severe extensive tendinopathy involving the supraspinatus tendon without evidence of a rotator cuff tear." Dr. Schlehr stated that he initially saw appellant on February 10, 2000 for her employment-related left shoulder injury.

By decision dated June 16, 2000, the Office denied appellant's claim on the basis that she failed to submit medical evidence showing a causal relationship between her condition and factors of her employment.

In a February 14, 2001 report, Dr. Schlehr attributed appellant's condition to her employment duties and not her February 10, 2000 fall. In support of his conclusion, he noted that appellant "had a repetitive type of motion injury to the rotator cuff, not an acute tear" at the time of her surgery. Thus, Dr. Schlehr concluded that appellant's injury was "a work[-]related

injury from repetitive motion and doing her work at the employing establishment that resulted in the rotator cuff tear.”

Appellant’s counsel requested reconsideration by letter dated May 30 and July 25, 2001 and submitted an undated report by Dr. Schlehr. In his undated report, Dr. Schlehr diagnosed “severe extensive tendinopathy of the supraspinatus tendon” based on a February 19, 2000 MRI scan which was repaired by surgery on July 5, 2000. He physician opined that appellant’s February 11, 2000 incident, where she tripped and fell over her dog, was not the cause of her shoulder injury. Dr. Schlehr attributed her shoulder injury to the repetitive work performed by appellant as her shoulder impingement syndrome, superior labral fraying and rotator cuff tear conditions “are consistent with a repetitive injury rather than a traumatic incident” and that “labral fraying in particular is not consistent with a traumatic injury.”

By merit decision dated August 3, 2001, the Office denied appellant’s request for modification.

In a letter dated September 19, 2001, appellant’s counsel requested the Office to issue a decision on appellant’s reconsideration request.

By nonmerit decision dated December 6, 2001, the Office denied appellant’s claim.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.² The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.³ Rationalized medical opinion evidence is medical evidence which

¹ *Trina Bornejko*, 53 ECAB ____ (Docket No. 01-1118, issued February 27, 2002).

² *Solomon Polen*, 51 ECAB ____ (Docket No. 97-1794, issued March 1, 2000); *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *Manuel Gill*, 52 ECAB ____ (Docket No. 99-915, issued March 2, 2001).

includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty,⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

Appellant submitted medical reports dated February 20 and March 10, 2000 and February 14, 2001 as well as an undated report from Dr. Schlehr. In his February 14, 2001 report, Dr. Schlehr opined that appellant's rotator cuff tear was employment related as it was consistent with an injury due to repetitive work and not her February 10, 2000 fall as it was not an acute tear. He provided further support in his undated report when he concluded appellant's shoulder injury was caused by her repetitive employment duties. In support of this conclusion, Dr. Schlehr noted that appellant's shoulder impingement syndrome, superior labral fraying and rotator cuff tear conditions "are consistent with a repetitive injury rather than a traumatic incident" and that "labral fraying in particular is not consistent with a traumatic injury." He has provided some support for causal relationship between appellant's accepted conditions and employment factors in his undated and February 14, 2001 reports.

While Dr. Schlehr's February 14, 2001 and undated reports are insufficient to establish a causal relationship between appellant's conditions and employment factors, the report constitutes sufficient evidence to require further development of the record by the Office.⁷

The Office should refer appellant, along with the case record and a statement of accepted facts, to an appropriate medical specialist for a well-rationalized opinion, based on a complete and accurate factual and medical background, regarding the causal relationship between appellant's shoulder conditions to factors of her employment. The Office should thereafter issue a *de novo* opinion on appellant's entitlement to compensation under the Act.⁸

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *See Morris Scanlon*, 11 ECAB 384-85 (1960).

⁶ *Patricia J. Glenn*, 53 ECAB ____ (Docket No. 01-65, issued October 12, 2001); *Leslie C. Moore*, 52 ECAB ____ (Docket No. 00-126, issued November 1, 2000).

⁷ *See John J. Carlone*, 41 ECAB 354 (1989). The Board notes that in this case the record contains no medical opinion contrary to appellant's claim.

⁸ In view of the Board's disposition of the first issue, the question of whether the Office erred in denying merit review of appellant's claim need not be reached.

The decisions of the Office of Workers' Compensation Programs dated December 6 and August 3, 2001 are hereby set aside and the case remanded for further proceedings consistent with the above opinion.

Dated, Washington, DC
July 8, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member